IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO :6328 of 1998

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Dated:23rd October 2007.

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Between:

Dr. R.V. Raveendra Babu, S/o Veerappa, aged about 37 years, Civil Assistant Surgeon –ortho, Balaji Institute of Research and Rehabilitation for Disabled (BIRRD), Tirumala Tirupathi Devasthanams, Thirupathi, Chittoor District.

..... PETITIONER

AND

The Executive Officer, Tirumala Tirupathi Devasthanams, Tirupathi, Chittoor District and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P.NO.6328 OF 1998

ORAL ORDER:

This writ petition is instituted calling in question the order passed on 22-06-1994 by the 1st respondent, temporarily promoting the 5th respondent as a Civil Surgeon (Orthopaedics) in the Balaji Institute of Research and Rehabilitation for Disabled (for short, ' the BIRRD') at Tirupathi.

The Tirumala Tirupathi Devasthanams (for short 'the TTD') had established a hospital for carrying on research and rehabilitation for the disabled at Tirupathi. The posts of Director, Civil Surgeon (Orthopaedics), Civil Assistant Surgeon (Orthopaedics) and other related specialty subjects, were also sanctioned for the said hospital. The

5th respondent was working as Civil Assistant Surgeon with another hospital run and managed by the TTD. He appears to have improved his qualifications by securing Post Graduate Degree in Orthopaedics from Mangalore University, duly passing the examinations conducted by the said University in June 1992. Therefore, he had been posted to the BIRRD. Further, by proceedings dated 21-10-1992 he was also absorbed as Civil Assistant Surgeon (Orthopaedics) in BIRRD with effect from 20-07-1992. The writ petitioner, who possesses Post Graduate

Speciality Degree in Orthopaedics, was appointed as Civil Assistant Surgeon (Orthopaedics) through proceedings, dated

02-07-1992 of the 1st respondent. He appears to have joined the said post of Civil Assistant Surgeon (Orthopaedics) on 06-07-1992. Therefore, the writ petitioner asserts that he is senior in service to the

5th respondent in the category of Civil Assistant Surgeon (Orthopaedics). Through the proceedings dated 22-06-1994, the TTD had accorded temporary promotion to the 5th respondent as Civil Surgeon (Orthopaedics). It is this order, which is called in question in this writ petition.

Regulating the conditions of service of the employees of the TTD, the Governor of Andhra Pradesh, had framed T.T.D. Service Rules, in terms of the power available under Section 153 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. These Rules were published in the A.P. Gazette (Extraordinary) dated 26-10-1989. While dealing with the post of Civil Surgeon (Orthopaedics) created in the BIRRD, the service rules have identified two channels of recruitment; one, by direct recruitment; and the other by way of promotion. The requirements for direct recruitment are that the candidates must possess the P.G. speciality Degree in Orthopaedics and should have worked as an

Orthopaedic surgeon in any recognized hospital for a period not less than five years and should have completed 45 years of age. So far as the channel of promotion is concerned, the Civil Assistant Surgeon (Orthopaedics), is the recognized source for the promotion to the post of Civil Surgeon (Orthopaedics). The requirement of length of service prescribed under the rules is five years as Civil Assistant Surgeon (Orthopaedics) and also possession of P.G. Degree in Orthopaedics. Therefore, by 22-06-1994, when the 1st respondent had accorded temporary promotion in favour of the 5th respondent herein, it is clear that he did not satisfy the requirement of minimum length of five years service as Civil Assistant Surgeon (Orthopaedics) to become eligible for such promotion. As was already noted supra, after the 5th respondent had acquired M.S. (Orthopaedics) Degree from Mangalore University, he came to be appointed/absorbed as Civil Assistant Surgeon (Orthopaedics) with effect from

20-07-1992. Thus, it is evident that the 5th respondent put in less than two years of service and experience as a Civil Assistant Surgeon (Orthopaedics) by the time he came to be temporarily promoted as Civil Surgeon (Orthopaedics). It will also be noteworthy that even the writ petitioner did not have two years of service and experience as Civil Assistant Surgeon (Orthopaedics) by the time the

5th respondent came to be promoted on 22-06-1994, for, the writ petitioner joined the service of BIRRD as Civil Assistant Surgeon (Orthopaedics) only on 06-07-1992. The temporary promotion accorded in favour of the 5th respondent on 22.06.1994 is contrary to the rigor of the service rules framed by the Governor of Andhra Pradesh, and, therefore, the same was clearly illegal.

The learned Standing Counsel for the TTD tried to justify its action in according temporary promotion in favour of the 5th respondent, by trying to fall back upon a provision incorporated in the A.P. Medical and Health Service Rules (for short, 'the Rules'). It is noteworthy that the A.P. Medical and Health Service Rules, have been constituted for various posts sanctioned in the Hospitals run and managed by the State of Andhra Pradesh. The A.P. Medical and Health Service is one of the civil services envisaged by the State. Therefore, in exercise of the power available under the proviso to Article 309 of the Constitution of India, the Governor promulgated the special rules regulating A.P. Medical and Health Services. The said special rules regulating the civil services of the State of Andhra Pradesh have no applicability to the services belonging to and managed by the TTD. Therefore, the attempt made by the learned Standing Counsel to justify the action of the respondents in according temporary promotion in favour of the 5th respondent on 22-06-1994 by drawing inspiration from

the A.P. Medical and Health Service rules, is clearly misplaced. The applicability of the service rules of the civil services of the State of Andhra Pradesh to the employees of the TTD does not empower the T.T.D. to apply the provisions contained in the A.P.Medical and Health Service Rules, automatically, while regulating the conditions of its own service. No examination was carried out to determine the extent and nature of applicability of the A.P.Medical and Health Service Rules, while considering the issue relating to the according promotion and filling up the post of Civil Surgeon (Orthopaedics) in BIRRD. It is worthy to notice that the A.P.Medical and Health Service Rules, at the relevant point of time, contained both teaching and non-teaching cadres. For becoming a Civil Assistant Surgeon, the minimum academic requirement is only an M.B.B.S. Degree, whereas for getting recruited to the specialized post of Civil Assistant Surgeon (Orthopaedics), the minimum requirement of academic qualification is a speciality Post Graduate Degree in Orthopaedics. Therefore, unless one possesses the speciality Post Graduate Degree in Orthopaedics, he cannot be appointed as a Civil Assistant Surgeon (Orthopaedics) at all. It is, therefore, manifestly clear that the 1st respondent had not been properly and correctly apprised the rigor of requirement of the rules regulating the TTD service. Due to the said failure, it had taken into

consideration the length of service put in by the 5th respondent as a Civil Assistant Surgeon prior to his appointment to the speciality post of Civil Assistant Surgeon (Orthopaedics) on 20-07-1992. Thus, the action of the 1st respondent in according temporary promotion on 22-06-1994 in favour of the 5th respondent is clearly illegal.

However, quashing the order of promotion of the 5th respondent, at this distant point of time, causes more number of problems than that could be redressed. Though the writ petitioner was also working in the same hospital, namely BIRRD, he had not chosen to institute the above writ petition promptly. While the 5th respondent was accorded promotion on 22-06-1994, the above writ petition came to be instituted in this Court nearly four years later, on 09-03-1998. Such long lapse of time after the 5th respondent had been accorded promotion as Civil Assistant Surgeon (Orthopaedics), is a good ground for denying the relief prayed for by the writ petitioner, for, by 1997 July, the 5th respondent had acquired the requisite five years of service and experience as an Orthopaedic Surgeon after he acquired M.S. (Orthopaedics) Degree from Mangalore University. This apart, he had rendered service as Civil Surgeon (Orthopaedics) from 1994 onwards and thus, gained experience in the specialist cadre of Civil Surgeon (Orthopaedics). Further, it is stated at the Bar that the writ

petitioner was not continuing as of now in the service of the TTD. It is also pleaded that Tirupathi being proximately close to both Madras and Vellore, where excellent medical facilities are available, retaining specialist doctors in service at Tirupathi was said to be causing difficulties. Therefore, unless the TTD acquires the services of the most sincere and dedicated doctors, it will not be able to accomplish the very purpose and objective for which the BIRRD had been established by it.

I consider it appropriate not to quash the order of temporary promotion of the 5th respondent. In fact, the learned Standing Counsel for the 5th respondent also urges that the 5th respondent had also been appointed as Director of the Institute in the mean time. Therefore, the arrangement should not be upset at this distant point of time.

For these peculiar facts and of circumstances, I consider it appropriate to direct the 1st respondent-TTD to take into consideration the quality of service rendered by the 5th respondent and decide as to whether he should be continued and treated as Civil Surgeon (Orthopaedics), or not. If the quality of service rendered by the

5th respondent prompts the TTD to take the decision in his favour to continue him as a Civil Surgeon

(Orthopaedics), then 5th respondent shall be accorded such a promotion from the date on which he had completed five years of service as a Civil Assistant Surgeon (Orthopaedics). Based upon this decision, the further question of continuing or otherwise in service, the 5th respondent as the Director of the BIRRD can be decided. Since the 5th respondent had rendered service as a Civil Surgeon (Orthopaedics) ever since the date of his temporary promotion as such, from 22-06-1994, I do not consider it appropriate to order for recovery of his pay, but however, his pay will be re-fixed as a Civil Surgeon (Orthopaedics) depending upon the decision now ordered to be taken by the TTD. The issue in this regard shall be finalized, as expeditiously as possible within a period of three months from now.

With this, the writ petition has been disposed of. No costs.

Nooty Ramamohana Rao, J

23rd October 2007
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